

## AGREEMENT TO SELL AND PURCHASE REAL ESTATE

THIS AGREEMENT TO SELL AND PURCHASE REAL ESTATE (this "Agreement") is entered into by and between the CITY OF SEATTLE, a first class city of the State of Washington ("Seller") and LOWE'S HIW, INC., a Washington corporation ("Purchaser") (individually, a "Party" and collectively, the "Parties"). The effective date of this Agreement (the "Effective Date") shall be January 21, 2005, irrespective of the date of execution by the Parties.

Seller is the owner of the parcels of real property depicted on Exhibit A attached hereto, and has determined that those parcels are no longer necessary for its purposes; and

Seller has offered to sell and Purchaser has agreed to purchase the property described hereinafter subject to the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the sufficiency of which consideration is acknowledged by all Parties hereto, IT IS HEREBY AGREED AS FOLLOWS:

1. DESCRIPTION OF REAL PROPERTY.

1.1. The Property. Seller's real property, consisting of approximately 21.25 acres of land, is located at 9400 Myers Way S in Seattle, King County, Washington, and is designated on Exhibit A as the "Property" (the "Property").

1.2. The Option Parcel. Seller owns an adjoining parcel of real property lying generally to the south of the Property, comprising approximately 10 acres, which is designated on Exhibit A as the "Option Parcel," to which Purchaser is granted an option to purchase pursuant to the terms of this Agreement (the "Option Parcel"). If Purchaser exercises its Option, as hereinafter defined, the Option Parcel shall become part of the Property as defined in this Agreement.

1.3. The Property shall include all of Seller's rights customarily transferred from a seller to a purchaser (in Seller's capacity as property owner and not rights arising from its status as a municipality or owner of public utilities), including Seller's rights to all easements in or upon the Property or benefiting the Property and rights of ingress and egress thereto as allowed by the City of Seattle Municipal Code and any applicable building code in public rights-of-way which border the Property, together with such residuary rights as may arise by operation of law from any future abandonment of any such rights-of-way.

1.4. Purchaser acknowledges that a portion of the Property contains an unopened street right-of-way designated SW Roxbury. Seller shall, prior to Closing, vacate the SW Roxbury right-of-way.

1.5. Purchaser acknowledges that Seller possesses a Surface Mine Reclamation Permit, designated 70-10167, with Washington State Department of Resources, and a General Sand and Gravel Permit, designated #WAG50-3170, with Washington State Department of Ecology, both of which permits are inactive, but which will be transferred to Purchaser as part of this transaction, along with any requirements of those permits.

1.6 The Parties recognize that this transaction is subject to approval of this Agreement by Ordinance adopted by the Seattle City Council.

2. TIME FOR PERFORMANCE. The closing of the transaction contemplated herein at which Seller shall convey the Property to Purchaser in accordance with the terms hereof shall take place (unless this Agreement is terminated as otherwise herein provided) within fifteen (15) days after the expiration of the Entitlement Period or the Entitlement Extension Period (as hereinafter defined) (the date established under this Section 2 for closing and performance being hereinafter sometimes referred to as the "Closing" or "Closing Date").

3. PURCHASE PRICE AND GRANT OF OPTION.

3.1. The total purchase price for the Property shall be the sum of Nine Million Eight Hundred Thousand Dollars (\$9,800,000.00), to be paid in cash at Closing.

3.2 Option. Seller hereby grants to Purchaser for a period of 90 days from the Effective Date, an option to purchase the Option Parcel for the additional sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the "Option"). The Option shall be exercised, if at all, by Purchaser notifying Seller in writing of Purchaser's intent to so exercise and payment into escrow of the additional earnest money deposit described in Section 4.2 below.

4. EARNEST MONEY DEPOSIT.

4.1. Initial Deposit. Within five (5) business days of the Effective Date, Purchaser shall deposit with First American Title Insurance Company, 2101 Fourth Avenue, Suite 800, Seattle, Washington 98212, attention: Donna Koerber (the "Escrow Agent") as a partial payment

of the total Purchase Price and as earnest money to bind this Agreement, the sum of Three Hundred Thousand Dollars (\$300,000.00) (the "Initial Deposit"), in cash or by an irrevocable Letter of Credit in a form and from a source approved by Seller and which provides that if Purchaser defaults under this Agreement the Escrow Agent may draw upon the Letter of Credit and deliver the proceeds to Seller. The Initial Deposit, if not refunded to Purchaser as provided herein or paid to Seller as liquidated damages pursuant to Section 14.2 hereof, shall be applied and credited to the Purchase Price at Closing.

4.2 Option Deposit. In addition to the Initial Deposit, in the event Purchaser exercises its Option, Purchaser shall deposit into escrow an additional Fifty Thousand Dollars (\$50,000.00) (the "Option Deposit"), and said Option Deposit, together with the Initial Deposit, shall be held and disbursed as described in Section 4.1 and Section 14.2 of this Agreement.

## 5. SURVEY AND TITLE INSURANCE.

5.1. Survey: Within fourteen (14) days after the Effective Date, Seller shall provide Purchaser with a copy of an ALTA survey of the Property (the "Survey"). Purchaser may, within twenty (20) days of receipt of the Survey, notify Seller of any matter shown on the Survey to which it objects, and may (i) request that Seller have the Survey amended to address such objection to Purchaser's satisfaction; (ii) require the Survey to be certified to Purchaser and the Title Company; and (iii) require, if necessary, that the Survey be revised to meet the Title Company's requirements for deletion of the general survey exception . If Purchaser does not so notify Seller of any objection to the Survey or matters shown therein, or notifies Seller that it has no such objections, the Survey shall be deemed acceptable by the Parties. If Seller refuses to amend the Survey as requested by Purchaser, Purchaser may, at its option, terminate this Agreement as provided herein, or waive any survey objection and proceed with the transaction. If approved by Purchaser, the metes and bounds description of the Property resulting from the Survey shall be the legal description of the Property for all purposes in this Agreement and shall be the description of the Property used in the Deed and the Owner's Policy of Title Insurance to be furnished hereunder.

5.2. Survey of Option Parcel. In the event Purchaser exercises its Option to purchase the Option Parcel, then within twenty (20) days of Seller's receipt of notice of such exercise, Seller shall furnish Purchaser with a copy of an ALTA survey of the Option Parcel (the

“Option Survey”). Purchaser may, within twenty (20) days of receipt of the Option Survey, notify Seller of any objection to the Option Survey or matters shown therein, and may request that Seller have the Option Survey amended to address such objection to Purchaser’s satisfaction. If Purchaser does not so notify Seller of any objection to the Option Survey or matters shown therein, or notifies Seller that it has no such objections, the Option Survey shall be deemed acceptable by the Parties. If Seller refuses to amend the Option Survey as requested by Purchaser, Purchaser may, at its option, terminate this Agreement as provided herein, or waive any survey objection and proceed with the transaction. If approved by Purchaser, the metes and bounds description of the Option Parcel resulting from the Survey shall be the legal description of the Option Parcel for all purposes in this Agreement and shall be the description of the Option Parcel used in the Deed and the Owner's Policy of Title Insurance to be furnished hereunder.

5.3. Title. Closing shall be conditioned upon First American Title Insurance Company, One First American Way, Santa Ana, California, c/o Kristen Heuter, National Accounts (the “Title Company”) issuing or committing to issue to Purchaser a standard coverage owner’s policy of title insurance (Form B 1970, amended 1984) in the amount of the Purchase Price (the “Title Policy”). The Title Policy shall insure that title to the Property is free and clear of all monetary encumbrances or other encumbrances of record except those listed in the title commitment and not objected to by Purchaser, which exceptions shall be the “Permitted Exceptions.” The lien of any current real property taxes not yet due and payable, and those matters excluded from coverage by the standard exceptions and exclusions contained in the form of title insurance policy required hereby, are Permitted Exceptions. Seller shall be pay the premium for the Title Policy and Purchaser shall be responsible for the additional cost of obtaining an extended coverage owners policy of title insurance, if Purchaser elects to obtain extended coverage, and for any additional endorsements required by Purchaser. Title shall be conveyed by bargain and sale deed.

5.3.A. Title Commitment. Within five (5) days after the Effective Date, Seller shall deliver a copy of the current title commitment (“Title Commitment”) for the Property to Purchaser, along with legible and complete copies of all documents referenced as title exceptions in the Title Commitment.

5.3.B. Purchaser shall have twenty (20) days after receipt of the Title Commitment to notify Seller of any objections Purchaser has to the condition of title. Seller shall then have ten (10) days after receipt of Purchaser's objections to notify Purchaser whether Seller will remove the exceptions objected to by Purchaser. If Seller provides no such notice within the ten (10) day period, then Seller shall be deemed to agree to remove all of the exceptions objected to by Purchaser, prior to Closing.

5.3.C. In the event that Seller provides notice that it will not remove all exceptions objected to by Purchaser prior to Closing, and the Parties cannot agree on an adjustment to the Purchase Price and/or other terms of this Agreement, then within ten (10) days of notice by Seller of Seller's intent not to remove one or more of the exceptions, Purchaser may, at its sole option:

(i) Notify Seller of Purchaser's intent to waive any exceptions which Seller has not agreed to remove and accept title to the Property subject to such exceptions, or

(ii) Terminate this Agreement by written notice to Seller and Escrow Agent, in which event this Agreement shall terminate, the Earnest Money deposit and all interest earned thereon shall be promptly refunded to Purchaser, and neither party shall have any further rights, duties or obligations under this Agreement.

5.3.D. Cost of Title Commitment. In the event that this Agreement is terminated without closing, the cost of the Title Commitment shall be borne by Seller, except that in the event that this transaction terminates due to a default of Purchaser, Purchaser shall bear the costs of the Title Commitment.

5.3.E. Title Updates. In the event any additional matters appear in any updated Title Commitment which were not contained in the original Title Commitment, such matters shall automatically be deemed to be unacceptable to Purchaser unless Purchaser expressly accepts in writing such additional matters.

## 6. PHYSICAL INSPECTION DUE DILIGENCE PERIOD.

6.1. Due Diligence Period. Purchaser shall have sixty (60) days from the Effective Date of this Agreement (the "Due Diligence Period") to conduct a physical inspection of the Property to determine whether the Property is suitable for Purchaser to construct and operate a warehouse home improvement center, at a cost and with conditions suitable to Purchaser

("Purchaser's Intended Use"), and to give written notice to Seller that the Property is not suitable. If at the end of the Due Diligence Period Purchaser has not notified Seller that the Property is unsuitable, One Hundred Thousand Dollars (\$100,000) of the Initial Deposit described in Section 4 of this Agreement shall become non-refundable. The "Option Due Diligence Period" shall coincide with the ninety (90) days of the Option Period. If at the end of the Option Due Diligence Period Purchaser has not notified Seller that the Option Parcel is unsuitable, the Option Deposit shall become non-refundable. Purchaser shall be under no obligation to purchase the Property or otherwise perform under this Agreement unless Purchaser determines the Property to be, in all respects, suitable for Purchaser's Intended Use. The decision as to whether the Property is suitable for Purchaser's Intended Use shall be the sole decision of Purchaser, determined in the absolute discretion of Purchaser, with Purchaser's decision being final and binding upon both parties.

6.2. Termination Right and Return of Deposit: If Purchaser, within the Due Diligence Period, determines that the Property is unsuitable for Purchaser's Intended Use, Purchaser may elect to terminate this Agreement and recover its Deposit. Should Purchaser determine that the Property is not suitable for Purchaser's Intended Use, Purchaser shall notify Seller of its termination of this Agreement. If Purchaser terminates the Agreement under this provision, Seller and the Escrow Agent shall be obligated to return the Deposit to Purchaser as provided in Section 4 of this Agreement, with neither Party having any other rights or obligations under this Agreement. If Purchaser does not elect to terminate this Agreement prior to the expiration of the Inspection Period, \$100,000.00 of the Deposit shall become non-refundable to Purchaser upon the expiration of the Inspection Period, except as expressly provided herein.

6.3. License for Inspection: Seller hereby grants to Purchaser, its contractors, agents and employees, the right and license to go onto the Property, including the Option Parcel if Purchaser exercises its Option to purchase the Option Parcel, for the purpose of conducting such surveys, tests, inspections, evaluations and sampling which Purchaser may require in its assessment of the Property. In general, as it applies to this Section and its subsections, Purchaser shall exercise its rights granted herein at all times in such a manner as shall not result in the Property becoming subject to any lien arising out of Purchaser's exercise of rights. Any lien

arising out of Purchaser's conduct in exercising any right granted under this Agreement shall be removed immediately at Purchaser's expense.

7. ENTITLEMENTS PERIOD.

7.1. Entitlements. Purchaser shall be under no obligation to purchase the Property or otherwise perform under this Agreement unless and until the following requirements of Purchaser are satisfied (the "Governmental Approvals"):

7.1.A. Governmental Approvals. Purchaser must be able to obtain a "Master Use Permit" from the City of Seattle Department of Planning and Development to allow Purchaser's Intended Use on the Property without unreasonable conditions or costs.

7.1.B. Zoning and Permits: The zoning classification of the Property must be designated C2-65 (or other classification permitting Purchaser's Intended Use). Seller shall reasonably cooperate with Purchaser in obtaining all permits, assurances, approvals from state, municipal, county and federal authorities necessary for Purchaser to satisfy itself during the Entitlement Period of the suitability of the Property. In no event, however, shall Seller be required to engage in any activity in connection with such cooperation with Purchaser in any manner that would constitute a breach of its fiduciary duties as a municipality.

7.2. Cooperation in Obtaining Permits or Approvals. Purchaser shall promptly commence efforts to obtain any and all such permits and approvals at its own expense. Seller shall cooperate with Purchaser in this regard and shall, if requested to do so, execute such applications or requests as may be necessary for the owner of the Property to execute and to provide any information privy to, known to, or in possession of Seller which may be necessary or useful in completing applications or requests.

7.3. Termination Right and Return of Deposit: Purchaser shall have one hundred eighty (180) days following the expiration of the Due Diligence Period to notify the Seller of its termination of this Agreement due to Purchaser's determination that it has not obtained Governmental Approvals (or has obtained Governmental Approvals with unreasonable conditions that adversely impact Purchaser's Intended Use or Purchaser's costs) ("the Entitlement Period"). In such event, Seller and the Escrow Agent shall be obligated to return the entire Deposit and all interest accrued thereon, as provided under Section 4 above, to Purchaser, with neither Party having any other rights or obligations under this Agreement. If Purchaser does

not elect to terminate this Agreement prior to the expiration of the Entitlement Period, the entire Deposit shall become non-refundable upon the expiration of the Entitlement Period, except as expressly provided herein. Notwithstanding the foregoing, Purchaser may terminate this Agreement at any time after expiration of the Entitlement Period and prior to Closing, subject to the provisions of Section 14.2.

7.4. Extension of the Entitlement Period: In the event that the conditions of Section 7.1 have not been satisfied by the expiration of the Entitlement Period, Purchaser may, at its option, extend the Entitlement Period and Purchaser's right to terminate the Agreement under Section 7.3 for an additional period of up to ninety (90) days (the "Entitlement Extension Period") for purposes of obtaining Governmental Approvals by giving written notice to Seller (the "Extension Notice") on or before the expiration of the Entitlement Period. If Purchaser extends the Entitlement Period pursuant to this section, the Purchase Price of the Property to be paid at closing shall be increased by an amount equal to One Thousand Five Hundred Fifty-Five Dollars (\$1,555.00) per day for each day that the Entitlement Period is extended. In accordance with Section 2 hereof, Closing shall take place no later than fifteen (15) days following termination of the Entitlement Period or the Entitlement Extension Period.

7.5. Additional Condition to Closing. In the event Purchaser does not exercise its Option to purchase the Option Parcel, Purchaser shall have no obligation to consummate the transaction contemplated herein unless Purchaser and Seller shall have mutually agreed to a document, in recordable form, which shall provide, among other things, that no portion of the Option Parcel shall be used for anything other than purposes which may be permitted by applicable zoning regulations, and prohibiting the following uses on any or all of the Option Parcel: An adult type bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation: magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult type entertainment or activities (including, without limitation, any displays or activities of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts); a mortuary, crematorium or funeral home; a mobile home or trailer court, labor camp, junkyard or stockyard; a landfill, garbage dump or other such facility for the dumping, disposing, incineration or reduction of garbage; a gambling establishment or betting parlor; assembling, manufacturing, industrial, distilling, refining or

smelting facility, provided that a distillery or brewery of beer or spirits as part of a restaurant or bar shall be permitted; and operation of a dry cleaning plant or central laundry facility.

8. ENVIRONMENTAL DISCLOSURE, REPRESENTATIONS, INVESTIGATION AND WARRANTIES.

8.1. Seller Disclosures. Within ten (10) business days of the last execution of this Agreement, Seller shall inform Purchaser of any known Hazardous Materials or Release, as defined hereinafter, and of any underground structures or utilities which are or may be present on the Property and Seller shall deliver to Purchaser any documentation (for example, any title evidence, surveys, reports, studies, test results, engineering drawings, permits or tank registrations) Seller has within its possession or control regarding such conditions, structures or utilities. Seller shall immediately notify Purchaser, in writing, of any Release, as defined hereinafter, or change to any environmental information previously given by Seller to Purchaser, and Seller understands that Purchaser needs this information in order to properly evaluate the Property, to avoid damaging underground structures and utilities and to avoid causing, contributing to or exacerbating the Release of a Hazardous Materials in the course of its investigations.

8.2. Purchaser Indemnification. Purchaser agrees to pay all of the costs and expenses associated with its investigation and testing and to repair and restore any damage to the Property caused by Purchaser's investigations or testing, at Purchaser's expense. Purchaser also agrees to indemnify and hold Seller harmless from all costs, expenses and liabilities arising out of Purchaser's negligence or willful misconduct or that of its employees, agents, consultants or contractors in performing its evaluation of the Property.

8.3. Samples: Soil, rock, water, asbestos, and other samples taken from the Property shall remain the property of Seller. Purchaser will make arrangements for the lawful disposal of any contaminated samples and will pay any related transportation or disposal fees and Seller shall sign the manifest and any other documents required in connection with the disposal of contaminated samples. If Seller does not sign the required documentation, Purchaser's only obligation shall be to return the contaminated samples to Seller.

8.4. Seller Environmental Representations and Warranties. Seller has undertaken an appropriate inquiry into the previous ownership and uses of the Property consistent with good

commercial or customary practice in an effort to minimize liability with respect to Hazardous Materials and represents and warrants to Purchaser that, except as disclosed and delivered to Purchaser hereunder:

8.4.A. The Property is now free from contamination by Hazardous Materials, and the Property and the activities conducted thereon as of the Effective Date and on Closing do not pose any significant hazard to human health or the environment or violate any Environmental Laws (as defined in Section 8.4.F). There is no evidence of Release of Hazardous Materials at the Property.

8.4.B. There has been no generation, treatment or storage of any Hazardous Materials at the Property nor any activity at the Property which could have produced Hazardous Materials.

8.4.C. There are no surface impoundments, lagoons, waste piles, landfills, injection wells, underground storage areas, tanks, storage vessels, drums, containers or other man-made facilities at the Property which may have accommodated Hazardous Materials at the Property. Neither Seller, nor any third person, has stored, placed, buried or Released Hazardous Materials at the Property, including the soil, surface water and ground water.

8.4.D. To the Seller's knowledge, there has been no treatment, storage or Release of any Hazardous Materials on land adjacent or near to the Property which may constitute a risk of contamination of the Property or surface water or ground water flowing to the Property.

8.4.E. No inspection, audit, inquiry or other investigation has been or is being conducted by any Governmental Authority (as hereinafter defined) or other third person with respect to the presence or discharge of Hazardous Materials at the Property or the quality of the air, or surface or subsurface conditions at the Property except for the Phase I environmental audits performed on behalf of Seller or any lender of Seller, copies of which will be delivered to Purchaser pursuant to this Agreement. Seller has not received notice that any such inspection, audit, inquiry or investigation is pending or proposed. Neither Seller, nor to Seller's knowledge, any previous owner of the Property has received any warning, notice, notice of violation, administrative complaint, judicial complaint or other formal or informal notice or request for information alleging that Hazardous Materials have been stored or Released at the Property or

that conditions at the Property are in violation of any Environmental Laws or requesting information regarding the use, storage, Release or potential Release of Hazardous Materials at the Property.

8.4.F. Definitions. For purposes of this Section 8 and this Agreement:

“Environmental Laws” shall mean any federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to any Hazardous Materials, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water runoff, waste emissions or wells. Without limiting the generality of the foregoing, the term shall encompass each of the following statutes, and regulations, orders, decrees, permits, licenses and deed restrictions now or hereafter promulgated thereunder, and amendments and successors to such statutes and regulations as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act (codified in scattered sections of 26 U.S.C., 33 U.S.C., 42 U.S.C. and 42 U.S.C. Section 9601 et seq.) (“CERCLA”); (ii) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) (“RCRA”); (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.); (iv) the Toxic Substances Control Act (15 U.S.C. Section 2061 et seq.); (v) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vi) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vii) the Safe Drinking Water Act (21 U.S.C. Section 349, 42 U.S.C. Section 201 and Section 300f et seq.); (viii) the National Environmental Policy Act (42 U.S.C. Section 4321 et seq.); (ix) the Superfund Amendments and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); (x) Title III of the Superfund Amendment and Reauthorization Act (40 U.S.C. Section 1101 et seq.); (xi) the Uranium Mill Tailings Radiation Control Act (42 U.S.C. Section 7901 et seq.); (xii) the Occupational Safety and Health Act (29 U.S.C. Section 655 et seq.); (xiii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (xiv) the Noise Control Act (42 U.S.C. Section 4901 et seq.); and (xv) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 1100 et seq.).

“Hazardous Materials” means each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or

identified as hazardous or toxic under any Environmental Law, including, but not limited to, asbestos or any substance containing asbestos, polychlorinated biphenyls, any explosives, radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes, any petroleum or petroleum-derived waste or product or related materials and any items defined as hazardous, special or toxic materials, substances or waste. Without limiting the generality of the foregoing, the term shall mean and include:

“Hazardous Substances” as defined in CERCLA, the Superfund Amendments and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder;

“Hazardous Waste” as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

Materials as defined as “Hazardous Materials” in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder; and

“Chemical Substance or Mixture” as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder.

“Governmental Authorities” means the United States, the State of Washington and any political subdivision thereof, and any and all agencies, departments, commissions, boards, bureaus, bodies, councils, offices, authorities, or instrumentality of any of them, of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

“Release” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing of Hazardous Materials into the environment.

Seller further agrees to execute any documents as may be required by Purchaser at Closing to evidence the continued effectiveness of the warranties, representations and covenants contained within this Section 8.

9. POSSESSION. Purchaser shall be given sole and exclusive possession of the Property at such time as the Deed is delivered by Seller to Purchaser and Purchaser pays the

Purchase Price as described in Section 3 of this Agreement. On or prior to the Closing, Seller shall remove any and all trash and/or debris located on the Property. At Closing, Purchaser shall sign a statement which recites that Purchaser has examined the property, finds it to be free of trash and/or debris and accepts the Property in its then present condition.

10. CLOSING.

10.1. Conveyance. At Closing, Seller shall deliver the Deed to Purchaser.

10.2. Title at Closing: Seller shall prepare at its cost and deliver to Seller at Closing a Bargain and Sale Deed conveying the Property in fee simple to Purchaser, which deed shall contain covenants of title satisfactory to Purchaser and shall state that Seller is seized of the Property in fee, Seller has bargained, sold and conveyed unto Purchaser and its successors and/or assigns in title the Property in fee simple and that Seller will warrant and defend title against the claims of all persons or entities (the "Deed"). Title to the Property at Closing shall be marketable and good of record and in fact and the Property shall be zoned to permit Purchaser's Intended Use. At the Closing, Seller shall convey marketable title to the Property in fee simple by means of the Deed, free and clear of any and all liens mortgages, deeds of trust, security interests, covenants, conditions restrictions, easements, rights-of-way, licenses, encroachments, judgments or encumbrances of any kind except:

10.2.A. the lien of real estate taxes not yet due and payable; and

10.2.B. Permitted Exceptions.

10.3. Costs: On the Closing Date, Seller shall have the responsibility of paying all state or county or municipal transfer or excise taxes and documentary stamps, if any, occasioned by the conveyance of the Property, as well as any notary fees incurred. The cost of Title Insurance shall be allocated as set forth in Section 5.3. All unpaid ad valorem taxes due and payable within the calendar year of the Closing shall be prorated between Seller and Purchaser as of the Closing Date. Seller agrees to promptly forward to Purchaser any property tax statements for the Property received by Seller after Closing and if Seller fails to do so, Seller shall be liable for any penalties Purchaser has to pay because of Seller's failure. Purchaser and Seller shall share equally all escrow fees charged by the Escrow Agent to close this transaction.

10.4. Brokerage Fees: Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through

any real estate broker or other person who can claim a right to a commission or finder's fee in connection with the sale contemplated herein, except for Tim McMahon and/or Washington Commercial Real Estate Services, Inc., whose commission and fees shall be paid by Seller. In the event that any other broker or finder makes a claim for a commission or finder's fee based upon any contact, dealings or communication with a Party, the Party whose conduct is the basis for the broker or finder making its claim shall indemnify, defend and hold harmless the other Party against and from any commission, fee, liability, damage, cost and expense, including without limitation attorney's fees, arising out of or resulting from any such claim. The provisions of this Section 10.4 shall survive the Closing, or in the event that the Closing does not occur, the termination of this Agreement.

11. ASSIGNMENT BY PURCHASER. This Agreement and the rights, duties, interests, and obligations of Purchaser hereunder may be assigned by Purchaser to an affiliate of Purchaser without Seller's consent. Any other assignment shall require Seller's consent, not to be unreasonably withheld or delayed. If such assignment is made, then the sale of the Property contemplated by this Agreement will be consummated in the name of any such assignee, and, after any such assignment, Seller will look solely to such assignee for the performance and discharge of all the obligations and liabilities of Purchaser hereunder, the Purchaser, in such event, being relieved of any obligation and liability hereunder.

12. NOTICES. Any notices, requests or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand or by a widely recognized national overnight courier service maintaining records of delivery, or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each Party at its address as set forth below, or may be given by fax transmission (in the case of fax transmission, the notice shall be deemed to be effective upon confirmation of receipt of the fax transmission, provided that such notice is also hand delivered or sent by overnight carrier or through the U.S. Mail on the day the fax notice is given):

To Seller:                      City of Seattle  
   c/o Joan Rosenstock  
   Strategic Planner/Project Manager  
   618 Second Street, 14<sup>th</sup> Floor  
   Seattle, Washington 98104  
   Fax No.: 206-684-0525

With a copy to: William McGillin  
Law Department  
City Hall, 4<sup>th</sup> Floor  
600 Fourth Avenue  
Seattle, WA 98104  
Fax No.: 206-684-8284

and to Purchaser: Lowe's HIW, Inc.  
1530 Faraday Avenue, Suite 140  
Carlsbad, CA 92008  
Attention: Bynum Marshall, Real Estate Manager  
Fax No.: 760-602-1018

cc: Lowe's HIW, Inc.  
1530 Faraday Avenue, Suite 140  
Carlsbad, CA 92008  
Attention: Rob Doane, Esq., Senior Corporate Counsel  
Fax No.: 760-604-8421

cc: Paul M. Harman, Esq.  
Jones, Waldo, Holbrook & McDonough  
170 South Main Street, Suite 1500  
Salt Lake City, UT 84101  
Fax No.: 801-328-0537

Any such notice, request or other communication shall be considered given or delivered, as the case may be, on the date of personal delivery or upon deposit in the United States mail or with an overnight courier as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, request or other communication. By giving at least five (5) days prior written notice thereof, either Party may from time to time at any time change its mailing address hereunder.

13. DESTRUCTION, CONDEMNATION. In the event of any material damage to or destruction of the Property or any material portion thereof or in the event of any taking or threat of taking by condemnation (or any conveyance in lieu thereof of the Property or any portion thereof by anyone having the power of eminent domain), Purchaser shall, by written notice to Seller delivered within (15) days of receiving written notice from Seller of such event, elect to: (i) terminate this Agreement and all of Purchaser's obligations under this Agreement, whereupon the Deposit, together with all interest accrued hereon, shall be returned to Purchaser and this

Agreement shall become null and void and no Party shall have any right, duty or obligation under this Agreement, or (ii) consummate the purchase of the Property. If Purchaser does not elect to terminate this Agreement, then Seller shall on the Closing Date pay to Purchaser all insurance proceeds then received by Seller plus an amount equal to any deductible, or self insurance retention related to the casualty coverage, and all condemnation awards and compensation then received by Seller. In addition, Seller shall transfer and assign to Purchaser, in form reasonably satisfactory to Purchaser, all rights and claims of Seller with respect to payment for damages and compensation on account of such damage, destruction or taking. Seller will not settle any condemnation or eminent domain claim or proceeding nor receive any award or payment in connection with a change in the grade of any street, road, highway or avenue in respect of or in connection with the Property without obtaining Purchaser's prior consent in each case.

#### 14. DEFAULT.

14.1. Seller's Default. One of the purposes of this Agreement is to bind Seller to sell the Property described in Section 1. If the sale and purchase of the Property contemplated by this Agreement is not consummated on account of Seller's default hereunder, the Deposit, together with all interest earned thereon, shall be refunded to Purchaser on notice by Purchaser to the Escrow Agent holding such deposit(s), without prejudice to any other rights or remedies of Purchaser hereunder, at law or in equity, which shall include that of specific performance.

#### 14.2. Purchaser's Default.

14.2.A. IF PURCHASER HAS NOT TERMINATED THIS AGREEMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS HEREOF AND THE SALE AND PURCHASE OF THE PROPERTY CONTEMPLATED BY THIS AGREEMENT IS NOT CONSUMMATED ON ACCOUNT OF PURCHASER'S DEFAULT HEREUNDER, SELLER SHALL BE ENTITLED, AS ITS SOLE AND EXCLUSIVE REMEDY HEREUNDER, TO PAYMENT OF THE DEPOSIT, PLUS ALL ACCRUED INTEREST THEREON, AS FULL AND COMPLETE LIQUIDATED DAMAGES FOR SUCH DEFAULT OF PURCHASER, THE PARTIES HERETO ACKNOWLEDGING THAT IT IS IMPOSSIBLE TO ESTIMATE MORE PRECISELY THE DAMAGES WHICH MIGHT BE SUFFERED BY SELLER UPON PURCHASER'S DEFAULT OF THIS AGREEMENT OR ANY DUTY ARISING IN CONNECTION OR RELATING HEREWITH.

14.2.B. SELLER'S ENTITLEMENT TO AND RECEIPT OF THE SUMS SET FORTH IN THIS SECTION 14 IS INTENDED NOT AS A PENALTY, BUT AS FULL AND COMPLETE LIQUIDATED DAMAGES. THE RIGHT TO RETAIN SUCH SUMS AS FULL LIQUIDATED DAMAGES IS SELLER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF DEFAULT HEREUNDER BY PURCHASER, AND SELLER HEREBY WAIVES AND RELEASES ANY RIGHT TO (AND HEREBY COVENANTS THAT IT SHALL NOT) SUE PURCHASER AS TO ANY CLAIMS, INJURY OR LOSS ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT: (i) FOR SPECIFIC PERFORMANCE OF THIS AGREEMENT, OR (ii) TO RECOVER DAMAGES IN EXCESS OF SUCH SUMS.

Seller's Initials BB

Purchaser's Initials AB KOF

15. EASEMENTS AND RIGHT-OF-WAYS. Seller covenants and agrees that during the term of this Agreement, it shall not grant or enter into any easements, rights-of-way, contracts for work, or other agreements affecting the Property, or the title thereto, without first obtaining the prior written consent of Purchaser.

16. WARRANTIES, REPRESENTATIONS AND COVENANTS TO SURVIVE CLOSING. The warranties, representations and covenants made by the Parties shall survive the Closing contemplated by this Agreement and the Closing Date and shall continue in full force and effect without termination. Also, wherever in this Agreement Seller or Purchaser shall have agreed or promised to perform certain acts or grant certain easements or other rights where the context of the Agreement would require such performance or grants to occur after the Closing, then those Agreements and covenants expressed herein shall survive Closing and continue to bind Seller and Purchaser. In addition, the warranties, representations and covenants made by the Parties shall survive the Closing of the purchase of the Property and shall continue to bind Seller and Purchaser.

17. SELLER'S WARRANTIES, REPRESENTATIONS AND COVENANTS. As an inducement to Purchaser to enter into this Agreement and to purchase the Property, Seller warrants, represents and covenants to Purchaser, as follows:

17.1. Authority. Seller has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein upon execution hereof will be legally obligated to Purchaser in accordance with the terms and provisions of this Agreement.

17.2. Seller is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Washington and has the power to own its property and assets. Seller warrants that the Director of the Fleets and Facilities Department is authorized on behalf of the Seller to execute this Agreement, subject to the approval of this Agreement by ordinance adopted by the Seattle City Council.

17.3. Seller is aware of no condition on or affecting the title to the Property, including but not limited to any material defect or material adverse fact relating to the Property, which will not be reflected as a matter of record title.

17.4. Seller is the owner of the Property in fee and has marketable and good title of public record and in fact.. On receipt of the Title Commitment, Seller will review the same. At Closing, Seller will warrant that there are no claims affecting title to the Property, other than those disclosed by the Title Commitment as of Closing.

17.5. To Seller's knowledge, other than as disclosed in the Documents provided by Seller to Purchaser, there are no Hazardous Materials (as defined in Section 8 hereof) on or in the Property. If any additional Hazardous Material is discovered by Purchaser on the Property prior to Closing, Purchaser shall have the right to terminate this Agreement.

17.6. To Seller's knowledge, there is no action, suit, investigation or proceeding (administrative or otherwise) pending or, to Seller's knowledge, threatened, against or affecting the Property or any portion of it, the transactions contemplated hereby, the Seller, or otherwise, which might affect the right of Purchaser to own, operate, develop or possess the Property or which might result in any liability of Purchaser with respect thereto. There is no pending condemnation or similar proceeding affecting the Property or any portion thereof, and Seller has not received any notice and has no knowledge that any such proceeding is contemplated.

17.7. There are no contracts, leases or other agreements which affect the Property or any portion thereof which would survive Closing, and Seller agrees not to enter into any such contracts, leases, or other agreements between the date of this Agreement and the Closing.

17.8. Other than as expressly disclosed by Seller to Purchaser in the Documents, there are no conditions on the Property which violate any applicable environmental, zoning, or building restrictions, insurance company guidelines, fire codes, or other governmental statutes, ordinances, rules, regulations or orders relating to health, safety or welfare, or any order by any

governmental agency or known insurance company requiring corrective action for any of the foregoing.

17.9. On the Closing Date, all necessary and appropriate action will have been taken by Seller authorizing and approving the execution of and entry into this Agreement, the execution and delivery by Seller of the documents and instruments to be executed by Seller on the Closing Date, and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation of the purchase and sale of the Property as contemplated herein.

17.10. Assessments and Taxes. To the best of Seller's knowledge, no assessments have been made against any portion of the Property which are unpaid (except ad valorem taxes for the current year), whether or not they have become liens, other than as shown in the Title Commitment. Seller shall notify Purchaser of any such assessments which are brought to Seller's attention after the execution of this Agreement. Seller will pay or cause to be paid promptly all city, state and county ad valorem taxes and similar taxes and assessments, all sewer and water charges and all other governmental charges levied or imposed upon or assessed against the Property and due by the Closing Date.

17.11. Boundaries. (i) There is no dispute involving or concerning the location of the lines and corners of the Property, and such lines and corners are clearly marked; (ii) to Seller's knowledge there are no encroachments on the Property and no portion of the Property is located within any "Special Flood Hazard Area" designated by the United States Department of Housing and Urban Development and/or Federal Emergency Management Agency, or in any area similarly designated by any agency or other governmental authority; and (iii) no portion of the Property is located within a watershed area imposing restrictions upon use of the Property or any part thereof.

17.12. Foreign Ownership. Seller is not a "foreign person" as that term is defined in the U. S. Internal Revenue Code of 1986, as amended, and the regulations promulgated pursuant thereto, and Purchaser has no obligation under Section 1445 of the U. S. Internal Revenue Code of 1986, as amended, to withhold and pay over to the U. S. Internal Revenue Service any part of the "amount realized" by Seller in the transaction contemplated hereby (as such term is defined in the regulations issued under said Section 1445).

17.13. No Prior Agreements. No prior agreements, options or rights of first refusal have been granted by Seller to any third Parties to purchase or lease any interest in the Property, or any part thereof, which are effective as of the Effective Date.

17.14. Mechanics and Materialmen Liens. On the Closing Date, Seller will not be indebted to any contractor, laborer, mechanic, materialmen, architect or engineer for work, labor or services performed or rendered, or for materials supplied or furnished, in connection with the Property for which any person could claim a lien against the Property and shall not have done any work on the Property within one hundred eighty (180) days prior to the Closing Date and shall cooperate with Purchaser and the Title Company to permit the Title Company to issue to Purchaser the Owner's Policy with affirmative protection against the existence of mechanics liens.

18. **PURCHASER'S WARRANTIES, REPRESENTATIONS AND COVENANTS.**

18.1 Purchaser hereby represents and warrants to Seller as follows:

18.1.A. Purchaser is a Washington corporation organized, validly existing and in good standing under the laws of the State of Washington, and has the power to own its property and assets.

18.1.B. At the time this Agreement is presented to Seller as an offer, this Agreement will have been duly authorized, executed and delivered by Purchaser; will constitute the legal, valid and binding obligation of Purchaser; and will be enforceable against Purchaser in accordance with its terms.

18.1.C. The purchase of the Property will not conflict with or result in a material breach affecting Purchaser's ability to perform under this Agreement, of any other agreement or instrument to which Purchaser is a party or by which it is or may be bound, or constitute a default under any of the foregoing, or to Purchaser's knowledge, violate any state or federal governmental law, statute, ordinance or regulation in effect on the date of execution of this Agreement.

18.1.D. The representations and warranties made by Purchaser in this Agreement are true on and as of the date of Closing with the same effect as though such representations and warranties had been made on and as of the date of Closing. Purchaser's representations set forth in this Section 18.1 shall survive Closing.

19. 1031 TAX-FREE EXCHANGE.

19.1. Seller's Exchange Cooperation. If requested to do so by Purchaser, Seller shall cooperate in a simultaneous or deferred exchange by transferring the Property to a third party (also an "Exchange Facilitator"), should Purchaser assign this Agreement to the Exchange Facilitator. The assignment may take effect only simultaneously with the Closing under this Agreement, and in no event shall Purchaser be relieved of any liability under this Agreement by reason of the assignment to an Exchange Facilitator and in no event shall the Exchange Facilitator have any right to enforce this Agreement that Purchaser would not have if there had been no assignment. Seller shall not be required to bear any escrow, title, or other expenses in excess of those Seller would bear if there were no exchange, nor shall Seller be required to expend any sums of money in connection with the exchange. Seller shall not be required to execute any document creating personal liability or assume or be exposed to any liability in connection with an exchange, nor shall the Closing Date be extended to consummate an exchange. In no event shall Seller be required to take title to any property other than the Property, and in no event shall Seller be responsible for any tax consequences to Purchaser or any other party in connection with an exchange. Purchaser agrees and covenants to defend, indemnify, protect, and save harmless Seller from any liability, damages, loss, cost and expense (including reasonable attorneys' fees) of whatsoever kind and nature arising out of any exchange.

19.2. Purchaser's Exchange Cooperation. If requested to do so by Seller, Purchaser shall cooperate in a simultaneous or deferred exchange by permitting Seller to assign this Agreement to a third party (an "Exchange Facilitator") and by accepting a conveyance of the Property from the Exchange Facilitator. This assignment may take effect only simultaneously with the Closing under this Agreement, and in no event shall Seller be relieved of any liability under this Agreement by reason of the assignment and in no event shall the Exchange Facilitator have any right to enforce this Agreement that Seller would not have if there had been no assignment. Purchaser shall not be required to bear any escrow, title, or other expenses in excess of those Purchaser would bear if there were no exchange, nor shall Purchaser be required to expend any sums of money in connection with the exchange. Purchaser shall not be required to execute any document creating personal liability or assume or be exposed to any liability in connection with an exchange, nor shall the Closing Date be extended to consummate an

exchange. In no event shall Purchaser be required to take title to any property other than the Property or accept a deed from anyone other than Seller, and in no event shall Purchaser be responsible for any tax consequences to Seller or any other party in connection with an exchange. Seller agrees and covenants to defend, indemnify, protect, and save harmless Purchaser from any liability, damages, loss, cost and expense (including reasonable attorneys' fees) of whatsoever kind and nature arising out of any exchange.

20. MISCELLANEOUS.

20.1. Forbearance Not a Waiver. The failure to enforce any particular provision of this Agreement on any particular occasion shall not be deemed a waiver by either Party of any of its rights hereunder, nor shall it be deemed to be a waiver of subsequent or continuing breaches of that provision, unless such waiver be expressed in a writing signed by the Party to be bound.

20.2. Time for Performance. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires on a Saturday, Sunday or legal or bank holiday, then such time period will be automatically extended through the close of business on the next following business day.

20.3. Further Assurances. The Parties agree that they will each take such steps and execute such documents as may be reasonably required by the other Party or Parties to carry out the intent and purposes of this Agreement.

20.4. Severability. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not effect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

20.5. Remedies Cumulative. The rights, privileges and remedies granted by Seller to Purchaser hereunder shall be deemed to be cumulative and may be exercised by Purchaser at its discretion. In the event of any conflict or apparent conflict between any such rights, privileges or remedies, Seller expressly agrees that Purchaser shall have the right to choose to enforce any or all such rights, privileges or remedies.

20.6. Authority. The undersigned officers of Seller and Purchaser hereby represent, covenant and warrant that all actions necessary by their respective Boards of Director, and shareholders and partners will have been obtained and that they will have been specifically authorized to enter into this Agreement and that no additional action will be necessary by them in order to make this Agreement legally binding upon them in all respects. Purchaser and Seller covenant to provide written evidence of compliance with this Section 20.6 prior to or on the Closing Date.

20.7. Successors and Assigns. The designation Seller and Purchaser as used herein shall include said Parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

20.8. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties and shall become a binding and enforceable Agreement among the Parties hereto upon the full and complete execution and unconditional delivery of this Agreement by all Parties hereto. No prior verbal or written Agreement shall survive the execution of this Agreement. In the event of an alteration of this Agreement, the alteration shall be in writing and shall be signed by all the Parties in order for the same to be binding upon the Parties.

20.9. Litigation. In the event of any litigation in relation to this Agreement, the unsuccessful party, in addition to all other sums that the unsuccessful party may be required to pay, shall be required to pay a reasonable sum for the successful party's attorneys' fees at the trial court level and on appeal.

20.10. Relationship of the Parties. Nothing contained herein shall be construed or interpreted as creating a partnership or joint venture between the Parties. It is understood that the relationship is an arms length one that shall at all times be and remain that of Purchaser and Seller.

20.11. Disclosure of Tax Items. Purchaser and its employees, officers, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structures of this transaction or agreement and all materials or documents of any kind (including opinions or other tax analyses) that are provided to Purchaser relating to such tax treatment and tax structure.

20.12. Counterparts. This Agreement may be executed in counterpart originals, each of which when duly executed and delivered shall be deemed an original and all of which when taken together shall constitute one instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement under seal as of the date first above written.

[SIGNATURES TO FOLLOW]



Signature Page for Purchaser:

PURCHASER:

LOWE'S HIW, INC.,  
a Washington corporation

By David E Shelton *KES*

Name:  
Title: **David E. Shelton**  
Date: **Senior Vice President** *PH*

STATE OF NORTH CAROLINA )  
 ) ss.  
COUNTY OF WILKES )

ON THIS 24<sup>th</sup> day of January, 2004, before me, the undersigned, a Notary Public in and for said County and State, personally appeared David E. Shelton, to me personally known to be the person described in and who executed the foregoing instrument, who, being by me first duly sworn, stated that he/she is the Sr. Vice President of LOWE'S HIW, INC., a Washington corporation, and that he/she executed such instrument on behalf of said corporation by authority of its board of directors, and said person acknowledged to me that he/she executed such instrument as the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

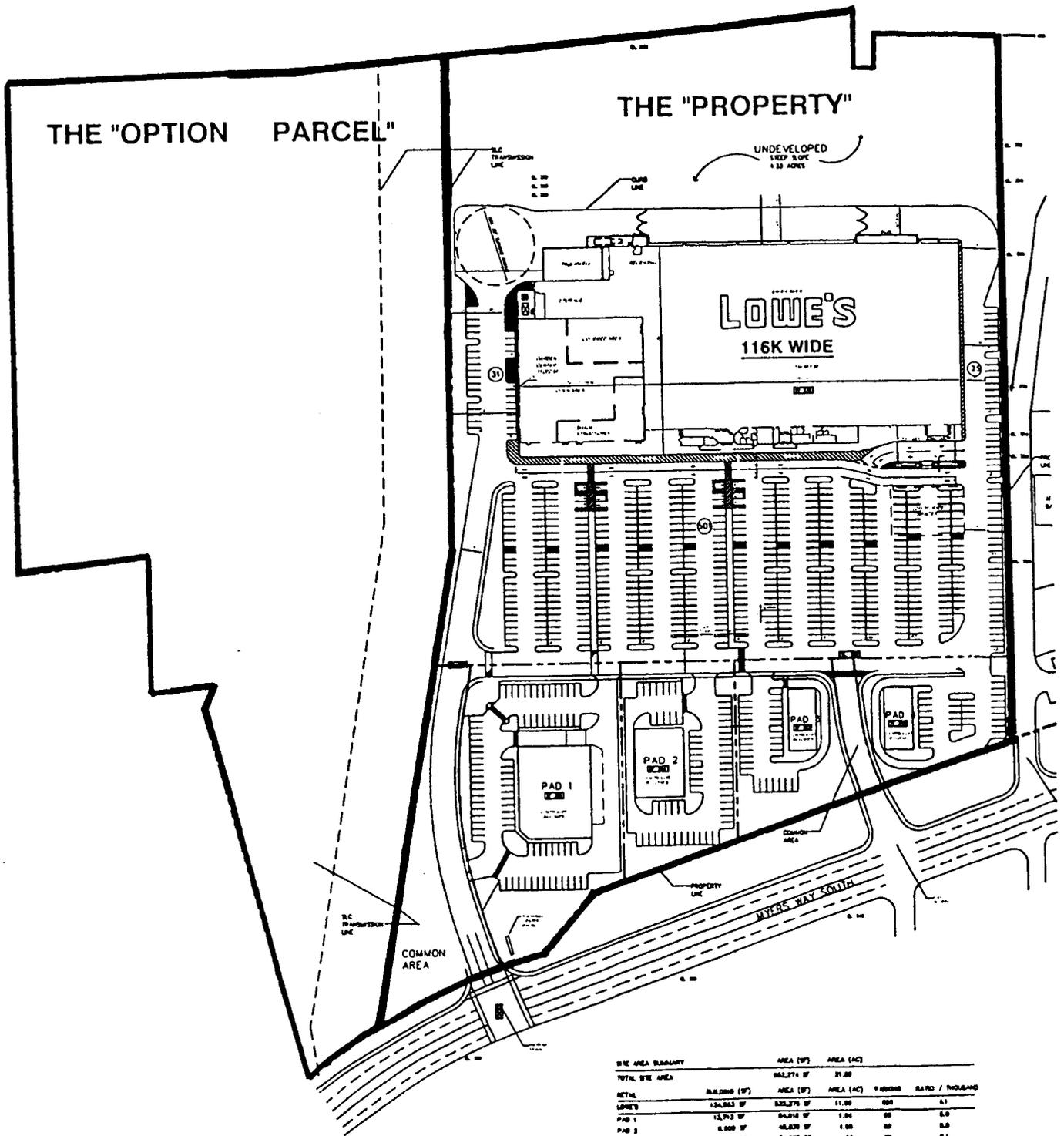
Notary Public Sheila H. Mastin  
Printed Name: Sheila H. Mastin

My Commission Expires:  
10-6-08



OFFICIAL SEAL  
North Carolina - Wilkes County  
SHEILA H. MASTIN  
Notary Public  
My Commission Expires 10-6-08

EXHIBIT A



BY AREA BOUNDARY	AREA (SF)	AREA (AC)		
TOTAL SITE AREA	862,274 SF	21.80		
NETAL				
LOWE'S	126,263 SF	2.91	11.00	6.1
PAD 1	15,713 SF	0.36	00	0.0
PAD 2	6,800 SF	0.16	00	0.0
PAD 3	3,300 SF	0.08	20	0.1
PAD 4	3,300 SF	0.08	27	0.1
COMMON AREAS	46,200 SF	1.05		
UNDEVELOPED AREA	104,200 SF	2.39		
TOTAL	194,476 SF	4.44	744	4.8

1 SITE PLAN  
 1.0 SCALE: NOT TO SCALE  
 NORTH